



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2004

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2004-7454

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208454.

The Texas Department of Transportation (the "department") received a request for all flight logs for state airplanes over a specified time period, including type of craft, destination, passengers, and requesting agency. The department takes no position with regard to the release of the requested information. However, you have notified interested third parties Texas A&M University System ("A&M"), Texas Department of Criminal Justice ("TDCJ"), Texas Department of Public Safety ("DPS"), Texas Parks and Wildlife Department ("TPWD"), and The University of Texas System ("UT") of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). The department has submitted a representative sample of the documents at issue to this office.¹ We also received correspondence from DPS, TPWD, and UT. We have considered their statements and reviewed the submitted information.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

TPWD states and provides supporting documentation that “[a]though TPWD records fall within the scope of this request, [the requestor] has provided clarification by e-mail and stated that he is not interested in TPWD’s documents.” Because the requestor specifically excludes TPWD documents from his request for information, any information related to TPWD is not responsive to the instant request for information, and we need not address the applicability of the Act to it.

Next, DPS states that it “does not wish to urge any discretionary exceptions” and it “does not believe the requested documents are confidential.” Additionally, UT states that it has reviewed the documents at issue and “has no objections to their release.” As DPS and UT have no objections, the information related to them must be released.

Finally, A&M and TDCJ have not submitted to this office any reasons explaining why their information should not be released. Consequently, the responsive information related to A&M and TDCJ must be released. *See* Gov’t Code §§ 552.301, .302.

In summary, we conclude that the responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 208454

Enc: Submitted documents

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